



Report of the State Comptroller of Israel | May 2022

Systemic Topics

Closing Criminal Files by the Israel Police and the Office of the State Attorney



Closing Criminal Files by the Israel Police and the Office of the State Attorney

Background

The Israel Police is the main branch of the criminal investigation system and will open an investigation once an offense is committed. The provisions of the Criminal Procedure Law regulate the closing of criminal files as the investigative bodies or the prosecution conclude that there is no room to charge the suspects. The prosecution bodies determine the investigation file closing grounds according to the State Attorney's directives and the Police Ordinance in the matter. The main closing grounds are: "the case circumstances are unsuitable for the continuation of the investigation or prosecution," "lack of evidence," and "lack of guilt." The closing ground has implications for a person's good name and livelihood.



Key figures

**approx.
830,000**

the number of adults in Israel who have a record in the Police Registry – one out of every 7.5 adults

**approx.
55,000**

the number of suspects' files, the Police and the State Attorney's Office closed in 2020 on the ground of "lack of evidence" – about 60% of the files closed in that year (approximately 90,000 files)

**approx.
6,000**

the number of suspects' files the State Attorney's Office closed on the ground of "lack of guilt" in 2020, as opposed to about 3,500 in 2015

**approx.
4,500**

the number of suspects' files the State Attorney's Office closed in 2020 on the ground of "the case circumstances are unsuitable for the continuation of the investigation or prosecution (circumstances)," as opposed to about 6,200 in 2015

**approx.
130,000**

the number of complainees for whom investigation files were opened without being questioned under caution in 2015–2020. About 126,000 of them were closed on the circumstances ground, and about 675 of them on the ground of "lack of evidence," without the Police updating them on this

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the number of complainants' appeal files where the Appeals Unit at the State Attorney Office instructed to indict, out of about 1,500 appeal files in 2020 (approximately 0.5%)

**approx.
3,800**

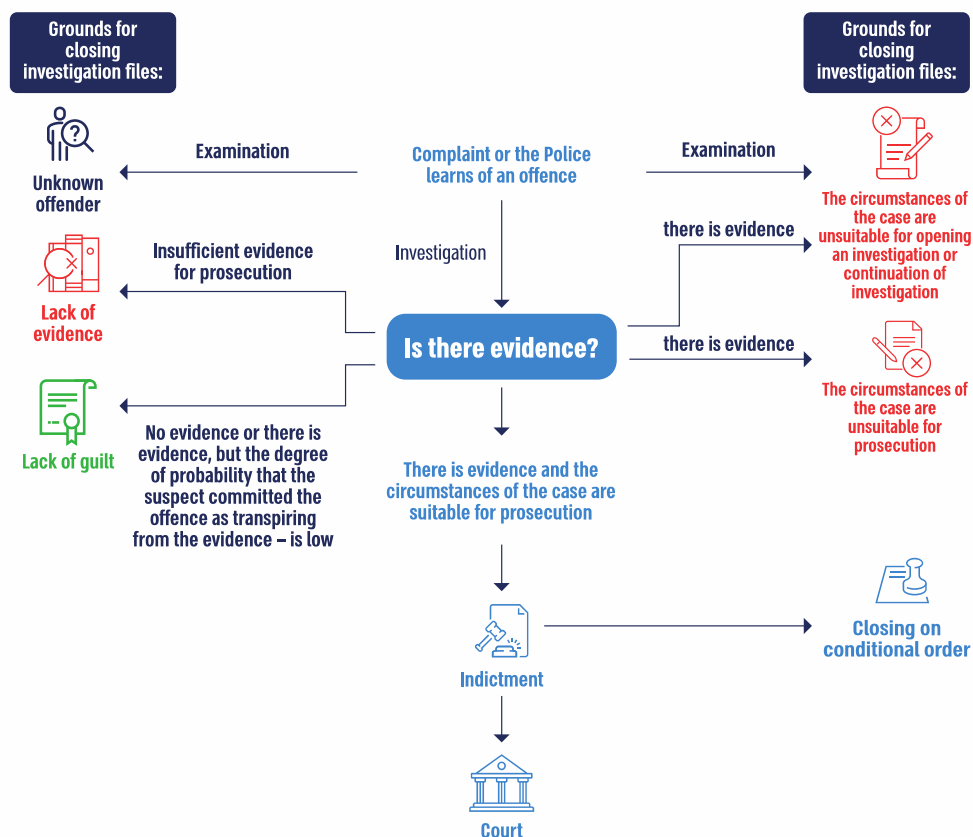
the number of files which concluded in conditional orders at the Police in 2020, as opposed to about 6,300 files in 2018, and about 5,700 files in 2019



Audit actions

From February to July 2021, the Office of the State Comptroller examined the proceedings for closing suspects' files and the appeals thereof. The examination focused on the closing grounds of criminal files and the deficiencies and barriers to appeal against the closing of the file by complainants and suspects. The audit was conducted at the State Attorney's Office and the Israel Police. Supplementary examinations were made at the Ministry of Public Security, the Ministry of Finance, and the Attorney General's Office.

Police investigation process until an indictment is filed or file is closed





Key findings



Police Registry record and its implications – the Police Registry records investigation of suspects files closed without an indictment being filed. In June 2021, about 830,000 people – about 13% of the adult population in Israel, had a record in the Police Registry (one in every 7.5 adults). About 450,000 (54%) had a record of 1 file and about 166,000 had a record more than 11 years old. Given the number of bodies and officials entitled to receive information on closed files from the Police Registry, thereby affecting various crossroads in a person's life whose investigation file has been closed, it is supreme essential that a criminal file is closed based on the correct ground.



Closing of files on the ground of "lack of evidence" and "lack of guilt" by the State Attorney's Office – the amendment to the State Attorney's Directive in January 2018 was designed so more files would be closed on the ground of "lack of guilt" and less on the ground of "lack of evidence". It was found that the number of files closed by the State Attorney's Office on the ground of lack of evidence (approximately 59%) had not decreased. Following the amendment, the number of files closed on the ground of "lack of guilt" increased from about 3,500 in 2015 to approximately 6,000 in 2020. Yet the number of files closed on the ground that "the case circumstances are unsuitable for the continuation of the investigation or prosecution" dropped from approximately 6,200 in 2015 to about 4,500 in 2020 (a decrease of 27%).



Closing files by the (Criminal) Districts' Attorneys – differences of about 20% were found in the number of files closed on the various grounds between the Districts' Attorneys. These differences raise concern that the possibility that a suspect's file is closed on the ground of "lack of guilt" is different in each one of the districts. In 2020, the possibility that the file would be closed on this ground at the Northern District Attorney's Office was approximately 33% and in the Haifa District Attorney's Office, the chance dropped to one-half of that, to approximately 15%.




Lack of data about the closing of files by the Police on the ground of "lack of guilt" – it was found that there is no data on closing of suspects' files on the ground of "lack of guilt" in the computerized systems of the Police's Research and Statistics Department. Consequently, it is impossible to examine the implementation of the State Attorney's Directive 1.3 by the Police and the assimilation of its principles concerning the use of the ground of "lack of guilt" since the Police do not collect this data for supervision and control, study and organizational statistics.





Closing suspects' files by the Police on the ground of "lack of evidence" – it was found that there had been a considerable increase in the number of files closed by the Investigations Department for "lack of evidence": from 41% in 2015 to 58% in




2020. It was further found that from 2015 to 2020, there had been a moderate decrease in the number of files closed by the Prosecution Department of the Police on the ground of "lack of evidence," and "The amended directive did not lead to a considerable change in the number of files closed on this ground. A presumption of innocence applies to every person as long as his guilt has not been proven beyond any reasonable doubt in a court of law. Supposedly, closing an investigation file instead of prosecuting means ratifying the presumption of innocence. However, closing files on the ground of "lack of evidence" is sufficient to erode this basic principle, particularly when it occurs in a considerable number of the files – an average of approximately 40,000 files in 2019–2020.

 **Closing a Police file of a complainees who has not been questioned** – it was found that every year an average of approximately 21,000 criminal files are closed on the ground of "circumstances" without questioning under caution the complainees and without the Police updating them. From 2015 to 2020, the files of 675 complainees who were not questioned were closed on the ground of "lack of evidence". A person classified as a complaineer who has not been questioned under caution is not at all aware that a file has been opened against him, and subsequently closed, and he is denied the right to apply to change the ground for closing.

 **Complainant's appeal against the decision not to investigate or prosecute the suspect** – there is a lack of clarity amongst complainants, attorneys, and Police bodies concerning the party to whom a complainant should appeal against the closing of an investigation file. From 2018 to 2020, the Appeals Unit at the Office of the State Attorney decided to close approximately 2,000 files annually following appeals by complainants. In about 0.5% of the appeals, indictments were filed and in approximately 3% to 5% of the appeals, a decision was made to complete the investigation. Approximately 94% of the appeals were dismissed.

 **A suspect's request to change the ground for closing by the Police** – the Police do not gather data regarding applications to change the closing grounds.

 **Barriers in the exercise of a complainant's right to appeal against the closing of a file and of a suspect to request a change in the closing ground** – it was found that in 30% to 40% of the closed files no notice of closing had been sent to the complainant or to the suspect. The Police sent the notices by regular post, and there is no way of knowing whether they were duly delivered and the date on which they were received. Since the notice to the complainant about the closing of the suspect's file is sent by regular post, the determining date for the commencement of the period of 60 days for filing an appeal by the complainant is unclear. An examination of 34 decisions in requests by suspects for changing the ground for closing or in complainants' appeals, found that 13 of them lacked reasoning. Discrepancies also arose concerning the transfer of the photocopies of the investigation materials to the suspects and the complainants wishing to appeal, and this is liable to adversely affect the citizen's statutory right to appeal or to request to change the ground for closing.



Conditional orders at the Police – in 2018, the Conditional Order Unit signed approximately 6,300 conditional orders with suspects and thus met the Police target. However, since then and until 2020, the number of orders has decreased by approximately 40%, and the sum of the fines imposed upon the suspects and the compensation they were obliged to pay to the complainants decreased respectively by approximately 17% from about NIS 6.4 million in 2018 to about NIS 6 million in 2019 and about NIS 5.3 million in 2020. From 2018 to 2020, the average sum paid by every suspect within the framework of the order made for him was only approximately NIS 1,000. The decrease in the number of orders from 2019 to 2020 is not as expected, since, after 2019, the conditional order was imposed on all misdemeanor within the Police's jurisdiction, and in those years, the Investigations Department transferred a more significant number of files to the Conditional Order Unit. The number of files referred to the Unit increased by approximately 24%, from 11,595 in 2018 to 14,364 in 2019.



The Office of the State Comptroller commends the use of alternative criminal proceedings, where appropriate, including the Conditional Order proceeding. So that, in certain circumstances, the social response is consistent with the severity of the offense, leading both to a reduction in the number of indictments and preventing an unnecessary criminal stain and a decrease in the number of investigation files closed without indictments.

Key recommendations









It is recommended that the State Attorney's Office examine whether the Districts' Attorneys are implementing State Attorney's Directive 1.3 to reduce the use of "lack of evidence" ground and highlight the differences between the grounds for closing. It is further recommended to ascertain that all the District Attorney's offices also act by the rationales underlying the directive to achieve a uniform file closing policy in all the districts, by the State Attorney's directives, which are designed, among other things, to ensure that jurisdiction is exercised according to equal principles.



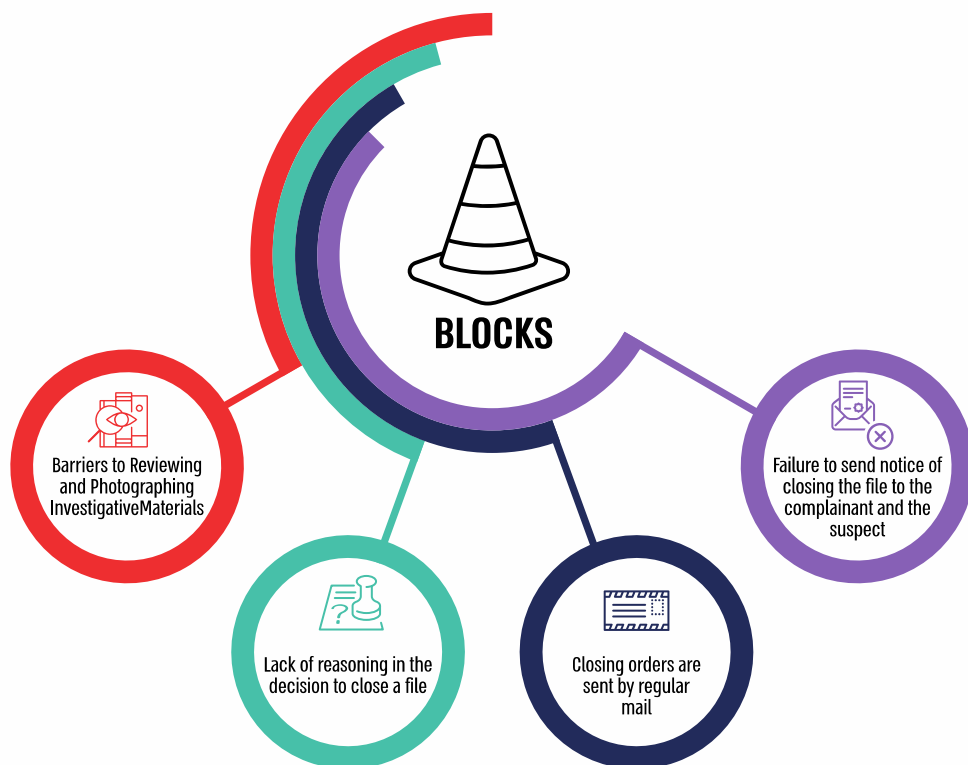
It is recommended that the Police periodically examine the extent the various grounds for closing are used by collecting all the data, including files that were closed on the ground of "lack of guilt," and analyze all the data in the Police's Research and Statistics Department. Collecting and analyze the data will form the basis for outlining the enforcement policy. Furthermore, the Investigations Department must direct and guide the investigations officers and the investigators authorized to close files at all the stations and districts, to realize the purpose of State Attorney's Directive 1.3.



-  It is appropriate that the Minister of Public Security add a criterion for expunging a police record, which will allow the automatic erasure from the Police Registry of years-old records of citizens who in the distant past had one file opened against them at the Police, and since then, they have been in the Police Registry.
-  The Police, in coordination with the Ministry of Justice, should complete the regulation of closing the complainees file, whether the complainees is questioned under caution or not questioned at all. Until the regulation, it is recommended that the Police inform complainants and complainees who have not been questioned under caution, it has been decided to close their file so they can obtain the ground for closing, and the complainant can appeal the conclusion.
-  The Police should accurately indicate on the notification form to the complainant the name of the party to whom it can submit an appeal against the closing of the investigation file and the contact details.
-  It is appropriate that the Police and the State Attorney's Office appoint one routing party, via whom complainants or suspects can submit appeals and reservations to the party closing the file online.
-  Given the downward trend in conditional orders, the Prosecution Department and the Police Investigations Department should cooperate to increase the number of relevant files closed in order while determining clear rules for transferring the files between them. Likewise, it is appropriate to set a target for the Investigations Department of a number of files that will conclude an order out of the files it transfers to the Conditional Order Unit.
-  It is recommended that the Ministry of Justice examine whether the conditional order proceeding is suitable for the purpose it was enacted – to reduce the load on the prosecution authorities and the legal system – and also consider directing the Prosecution Department and the State Attorney Office to set targets for expanding the use of conditional orders while reducing the use of the criminal tools in the appropriate files.



Barriers in the exercise of the right to appeal against the closing of a file





Summary

The decision by the enforcement and prosecution authorities to close a criminal file might reduce a person's possibilities of making a living and besmirch his reputation. This report includes findings necessitating an examination by the enforcement and prosecution authorities regarding the extent of use of the various grounds for closing. This examination should also be made in light of the update to the State Attorney's directive from 2018, which was designed, among other things, to reduce the number of files closed on the ground of "lack of evidence". While paying attention to the presumption of innocence granted to suspects whose files were closed, and sealing of the possibility of prosecuting who the complainants claim has harmed them, it is recommended that the enforcement and prosecution authorities rectify deficiencies indicating barriers in exercising the suspects' and complainants' rights to appeal against the decision. Likewise, it is appropriate to appoint one routing party to whom the complainants or suspects can file appeals and reservations online.

